



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1994

Ms. Helen M. Gros
Senior Assistant City Attorney
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-386

Dear Ms. Gros:

Your predecessor has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The City of Houston (the "city") received two open records requests for records concerning the condition and maintenance of a stop sign or signs located at the intersection of Portsmouth and Park. That request was assigned ID Nos. 23821 and 24075.

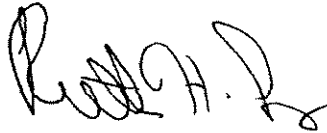
The city contends that the information may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), the city has the burden of demonstrating that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.) Open Records Decision No. 551 (1990) at 4.

The city bases its contention that the information is excepted on a letter from an insurance company to the city that discusses an accident involving an individual who is insured by the company. The letter, dated December 22, 1992, states that "[t]his letter is to put you on notice of a pending claim that occurred at Portsmouth and Park." The letter discusses a "claimant" who was injured in the accident and suggests that the city contact the attorney representing that individual. The insurance company also suggests that one of the contributing factors to the accident was the condition of the "stop sign eastbound on Portsmouth." The city has provided no other information that shows litigation is reasonably anticipated.

Since the city has provided no information other than the submitted letter to show that litigation is reasonably anticipated, it has not met its burden under section 552.103(a). The letter does not state that a claim against the city will be made. The "claim" which the insurance company discusses could even be a claim made against the company by the individual who was injured. We note that under the facts supplied there may be a chance of litigation involving the city. However, litigation is not reasonably anticipated unless there is more than a "mere chance" of litigation. Open Records Decision No. 452 (1986) at 4. Since the city has not met its burden of showing that section 552.103(a) is applicable in this situation, the information at issue must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 23821, 24075

Enclosures: Submitted documents

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